
Introduced by Senator Poochigian

February 22, 2005

An act to amend Section 6600 of the Welfare and Institutions Code relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 865, as introduced, Poochigian. Sexually violent predators.

Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation. Existing law authorizes commitment of a person as a sexually violent predator, if the person has been convicted of prescribed sexually violent offenses, has been diagnosed with a mental disorder, and has been adjudged to be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior. The law defines "sexually violent offense" for this purpose.

This bill would revise the list of qualifying crimes within the definition of "sexually violent offense," including, but not limited to, engaging in 3 or more acts of substantial sexual conduct with a child under the age of 14 years by a person who either resides in the same home with the minor child or has recurring access to the child.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6600 of the Welfare and Institutions
- 2 Code is amended to read:

1 6600. As used in this article, the following terms have the
2 following meanings:

3 (a) (1) “Sexually violent predator” means a person who has
4 been convicted of a sexually violent offense against two or more
5 victims and who has a diagnosed mental disorder that makes the
6 person a danger to the health and safety of others in that it is
7 likely that he or she will engage in sexually violent criminal
8 behavior.

9 (2) For purposes of this subdivision any of the following shall
10 be considered a conviction for a sexually violent offense:

11 (A) A prior or current conviction that resulted in a determinate
12 prison sentence for an offense described in subdivision (b).

13 (B) A conviction for an offense described in subdivision (b)
14 that was committed prior to July 1, 1977, and that resulted in an
15 indeterminate prison sentence.

16 (C) A prior conviction in another jurisdiction for an offense
17 that includes all of the elements of an offense described in
18 subdivision (b).

19 (D) A conviction for an offense under a predecessor statute
20 that includes all of the elements of an offense described in
21 subdivision (b).

22 (E) A prior conviction for which the inmate received a grant of
23 probation for an offense described in subdivision (b).

24 (F) A prior finding of not guilty by reason of insanity for an
25 offense described in subdivision (b).

26 (G) A conviction resulting in a finding that the person was a
27 mentally disordered sex offender.

28 (3) Conviction of one or more of the crimes enumerated in this
29 section shall constitute evidence that may support a court or jury
30 determination that a person is a sexually violent predator, but
31 shall not be the sole basis for the determination. The existence of
32 any prior convictions may be shown with documentary evidence.
33 The details underlying the commission of an offense that led to a
34 prior conviction, including a predatory relationship with the
35 victim, may be shown by documentary evidence, including, but
36 not limited to, preliminary hearing transcripts, trial transcripts,
37 probation and sentencing reports, and evaluations by the State
38 Department of Mental Health. Jurors shall be admonished that
39 they may not find a person *to be* a sexually violent predator
40 based on prior offenses absent relevant evidence of a currently

1 diagnosed mental disorder that makes the person a danger to the
2 health and safety of others in that it is likely that he or she will
3 engage in sexually violent criminal behavior.

4 (4) The provisions of this section shall apply to any person
5 against whom proceedings were initiated for commitment as a
6 sexually violent predator on or after January 1, 1996.

7 (b) “Sexually violent offense” means the following acts when
8 committed by force, violence, duress, menace, or fear of
9 immediate and unlawful bodily injury on the victim or another
10 person, and that are committed on, before, or after the effective
11 date of this article and result in a conviction or a finding of not
12 guilty by reason of insanity, as provided in subdivision (a): a
13 felony violation of ~~paragraph (2) of subdivision (a)~~ *Section 220*
14 *except assault with intent to commit mayhem*, of Section 261,
15 ~~paragraph (1) of subdivision (a)~~ of Section 262, Section 264.1,
16 subdivision (a) or (b) of Section 288, *Section 288.5*, or
17 ~~subdivision (a)~~ of Section 289 of the Penal Code, or sodomy or
18 oral copulation in violation of Section 286 or 288a of the Penal
19 Code.

20 (c) “Diagnosed mental disorder” includes a congenital or
21 acquired condition affecting the emotional or volitional capacity
22 that predisposes the person to the commission of criminal sexual
23 acts in a degree constituting the person a menace to the health
24 and safety of others.

25 (d) “Danger to the health and safety of others” does not
26 require proof of a recent overt act while the offender is in
27 custody.

28 (e) “Predatory” means an act is directed toward a stranger, a
29 person of casual acquaintance with whom no substantial
30 relationship exists, or an individual with whom a relationship has
31 been established or promoted for the primary purpose of
32 victimization.

33 (f) “Recent overt act” means any criminal act that manifests a
34 likelihood that the actor may engage in sexually violent predatory
35 criminal behavior.

36 (g) Notwithstanding any other provision of law and for
37 purposes of this section, no more than one prior juvenile
38 adjudication of a sexually violent offense may constitute a prior
39 conviction for which the person received a determinate term if all
40 of the following applies:

1 (1) The juvenile was 16 years of age or older at the time he or
2 she committed the prior offense.

3 (2) The prior offense is a sexually violent offense as specified
4 in subdivision (b). Notwithstanding Section 6600.1, only an
5 offense described in subdivision (b) shall constitute a sexually
6 violent offense for purposes of this subdivision.

7 (3) The juvenile was adjudged a ward of the juvenile court
8 within the meaning of Section 602 because of the person's
9 commission of the offense giving rise to the juvenile court
10 adjudication.

11 (4) The juvenile was committed to the Department of the
12 Youth Authority for the sexually violent offense.

13 (h) A minor adjudged a ward of the court for commission of
14 an offense that is defined as a sexually violent offense shall be
15 entitled to specific treatment as a sexual offender. The failure of
16 a minor to receive that treatment shall not constitute a defense or
17 bar to a determination that any person is a sexually violent
18 predator within the meaning of this article.